55 4931

1108

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 222. 39.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PETITIONER,

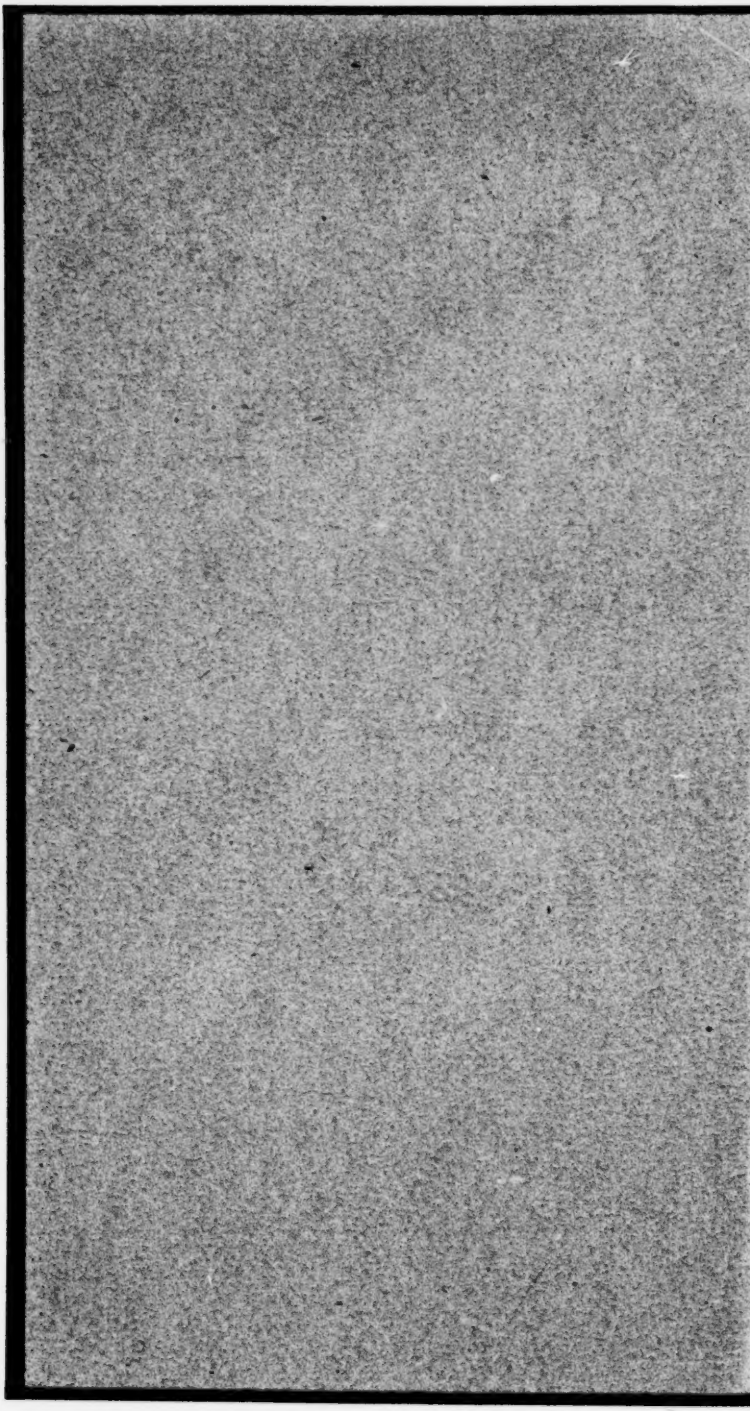
vs.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 17, 1901.
CERTIORARI AND RETURN FILED MARCH 25, 1901.

(18,025.)



(18,025.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 232.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PETITIONER,

vs.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript from United States circuit court of appeals	*a*	1
Transcript from United States circuit court, district of Minnesota	1	1
Petition	1	1
Note, S. W. Matteson to James H. Easton & Co., $2,500, February 27, 1894	2	2
Note, S. W. Matteson to James H. Easton & Co., $2,500, February 27, 1894	2	3
Summons and marshal's return	5	5
Answer	6	6
Stipulation extending time to file reply	10	9
Reply	10	10
Stipulation placing case on calendar	12	11
Stipulation as to facts and waiver of jury	13	12
Order of probate court fixing time to present claims for allowance	14	13
Petition to fix time for allowance of final account	14	13
Order finally settling and allowing accounts of administrator	15	14
Summary statement by probate judge	15	15
Order of distribution	16	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 13, 1901.

	Original	Print
Petition of Security Trust Co. to amend and correct decrees	18	17
Order amending and correcting final decree	19	18
Letter, F. S. Easton to S. W. Matteson, Jr., August 8, 1895	20	19
Findings and order for judgment	25	23
Stipulation as to costs	26	23
Judgment	26	24
Assignment of errors	27	25
Bond on writ of error	28	26
Petition for and order allowing writ of error	30	28
Writ or error and clerk's return	31	28
Citation and admission of service	32	29
Clerk's certificate to transcript	33	30
Appearance for plaintiff in error	34	30
Appearance for defendant in error	34	31
Order of submission	35	31
Opinion of United States circuit court of appeals	36	32
Judgment of United States circuit court of appeals	37	33
Petition for rehearing	38	33
Order denying petition for rehearing	44	36
Order staying mandate	44	36
Clerk's certificate to transcript	46	37
Writ of certiorari	47	38
Stipulation as to return	48	38
Return to writ of certiorari	49	39

a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit: on the sixteenth day of November, A. D. 1899, a transcript of record was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, pursuant to a writ of error directed to the circuit court of the United States for the district of Minnesota, in a case wherein Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and The Black River National Bank of Lowville was defendant in error, which said transcript of record is in the words and figures following to wit:

1 UNITED STATES OF AMERICA:

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, third division, of the January, 1899, term of said court, held in the city of St. Paul, in said district, in the year of our Lord 1899.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 22nd day of January, A. D. 1897, came the plaintiff and filed in the clerk's office of said court its bill of complaint in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The petitioner above named respectfully shows to the court that The Black River National Bank of Lowville, during all the times

hereinafter stated was, and is, a corporation duly incorporated, organized and created under the national banking laws of the United States, and doing a general banking business at Lowville, county of Lewis and State of New York, and having its general place of business and only place of business in said Lowville, in the State of New York and is a resident and citizen of the State of New York. That all of its officers and employees are residents and citizens of the State of New York.

II.

That the defendant, The Security Trust Company is a corporation created under and by virtue of the laws of the State of Minnesota, and doing business in the State of Minnesota, and having its principal and only place of business at the city of St. Paul, county of Ramsey and State of Minnesota, and it and all its officers are residents of the State of Minnesota.

2 That said defendant, The Security Trust Company of St. Paul, was duly appointed administrator of the estate of Sumner W. Matteson, deceased, by the proper probate court in the county of Ramsey, to wit, the probate court of the county of Ramsey and State of Minnesota, on or about the 3rd day of September, 1895. That during his lifetime and at all the times hereinafter stated, prior to the said 3rd day of September, 1895, the said Sumner W. Matteson was a resident and citizen of the State of Minnesota.

III.

That heretofore, to wit, on the 27th day of February, 1894, the said Sumner W. Matteson, otherwise known as S. W. Matteson, executed his certain promissory note in writing, whereby, for value received, he promised to pay to the order of James H. Easton & Co. at the First National Bank of Decorah, Iowa, the sum of twenty-five hundred dollars, four months after date, with interest thereon at the rate of eight per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

"DECORAH, IOWA, *Feb'y* 27, 1894.

$2,500. No. —.

Four months after date, for value received, I promise to pay to James H. Easton & Co. or order, at the First National Bank of Decorah, Iowa, twenty-five hundred dollars, with interest at the rate of eight per cent. per annum from date until paid.

(S'd) S. W. MATTESON.

Post-office ——.

(Indorsed on back:) Demand, notice and protest waived and payment guaranteed at maturity. Jas. H. Easton & Co. Interest paid to November 24, 1894."

That on the same date, to wit, on the 27th day of February, 1894, the said Sumner W. Matteson, otherwise known as S. W. Matteson,

executed his certain other promissory note in writing, whereby, for value received he promised to pay to the order of James H. Easton & Co. four months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of eight per cent. per annum from date until paid.

That said promissory note is in words and figures as follows, to wit:

"DECORAH, IOWA, *Feb'y* 27, 1894.

$2,500. No. —.

Four months after date, for value received, I promise to pay to James H. Easton & Co. or order, at the First National Bank of
3 Decorah, Iowa, twenty-five hundred dollars, with interest at the rate of eight per cent. per annum from date until paid.

(S'd) S. W. MATTESON.

Post-office ——.

(Indorsed on back:) Demand, notice and protest waived and payment guaranteed at maturity. Jas. H. Easton & Co. Interest paid to November 24, 1894."

That thereafter, to wit, on the 22nd day of March, 1894, and before maturity of said notes last above described, the said James T. Easton & Co., payee in said notes, for value received, sold, transferred and assigned each of said notes last above described to the Black River National Bank of Lowville. And on the 22nd day of March, 1894, the Black River National Bank of Lowville purchased the said notes and each thereof of said James H. Easton & Co. for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said notes, or either thereof. That said James H. Easton & Co. was a copartnership doing business at Decorah, Iowa, and all the members of said firm were residents and citizens of the State of Iowa, at all the times stated herein. That your petitioner is now and ever since the 22nd day of March, 1894, has been the owner and holder of each and every of said notes above and herein described. That no part of said notes, or either of them, has ever been paid, except the interest thereon to the 24th day of November, 1894.

IV.

That defendant, as administrator of the estate of Sumner W. Matteson, deceased, has in its hands and under its control a large amount of property, money and effects which belonged in his lifetime to the said Sumner W. Matteson and petitioner, on information and belief allege- that the property, money and effects remaining in the hands of said defendant and under its control *is* more than sufficient to pay the amount due this petitioner upon said promissory notes hereinbefore described and herein set forth, after the payment of all just debts and charges against the estate of Sumner W. Matteson, deceased. That the estate of Sumner W. Matteson, deceased, is now in process of settlement and in the probate court of Ramsey county, State of Minnesota, and has not been fully and finally settled and

probated, and that said administrator had never been discharged and is still the administrator of the said estate of said Summer W. Matteson, deceased.

4 V.

That no part of said notes has been paid, except as herein alleged and your petitioner has demanded of defendant above named, that said defendant make payment of said notes and each thereof out of the funds, money and property in its hands and belonging to the estate of said Summer W. Matteson, and said defendant has at all times since its appointed as such administrator well known that said notes were due and unpaid and were held by petitioner herein, and said defendant has neglected and refused to pay said notes, or any part thereof.

Wherefore, petitioner demands judgment against the defendant for the sum of five thousand dollars ($5,000) and interest thereon at the rate of eight per cent. per annum from and since the 24th day of November, 1894, together with the costs and disbursements of this action.

STRINGER & SEYMOUR,
Attorneys for Petitioner, Nat. Ger. Am. Bank Building, St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

E. C. Stringer came before me personally and being first duly sworn, deposes and says that, he is one of the attorneys of the petitioner in the above-entitled action, and authorized to make this affidavit in its behalf. That he has read the foregoing complaint and that the same is true to the best of his knowledge, information and belief, and that the reason why this affidavit of verification is not made by said petitioner is that said petitioner and all its officers are absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 21st day of January, 1897.

[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minn.

Complaint. Filed January 22, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereupon, upon application of said attorneys a summons was duly issued out by said court under the seal thereof, and in the words and figures following, to wit:

5 UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In the Circuit Court of the United States for the District of Minnesota.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Plaintiff, }
against }
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant. } Summons.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in St. Paul, county of Ramsey, and State of Minnesota, and file your answer in said clerk's office, within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will take judgment against you for the sum of $5,000.00 and interest thereon at the rate of eight per cent. per annum from and since the 24th day of November, 1894, together with the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States of America, this 22nd day of January, A. D. 1897. Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

U. S. Circuit Court Seal.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.

Summons. Returned and filed Jan. 23, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed summons on the therein-named defendants, The Security Trust Company of St. Paul, as administrators of the estate of Sumner W. Matteson, deceased, by handing to and leaving a true and correct copy
6 thereof with Edward J. Hodgson, the president of said trust Co. personally at St. Paul, in said district on the 23rd day of January, A. D. 1897.

R. T. O'CONNOR,
U. S. Marshal,
By G. D. HENRY, *Deputy*.

Fees $2.06.

Thereafter and on the 12th day of February, 1897, the following answer was filed in the clerk's office of said court in the words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For answer to the plaintiff's complaint the defendant shows to the court and alleges:

It admits that the plaintiff Black River National Bank of Lowville is and was a corporation organized under the national bank laws of the United States, having its place of business in the State of New York, and all of its officers of the State of New York, all as in the first paragraph or subdivision of said complaint is alleged.

It admits that it is a corporation created under and by virtue of the laws of the State of Minnesota, with its only place of business in the city of St. Paul, in Ramsey county, State of Minnesota, and with all its officers residents of the State of Minnesota, all as in the second paragraph or subdivision of said complaint alleged, and that said Sumner W. Matteson therein mentioned at the times in said complaint alleged was a resident and citizen of the State of Minnesota, and that this defendant on September 3, 1895, was duly appointed administrator of the estate of Sumner W. Matteson, he having died prior to that date while a resident of said State of Minnesota, all as in the second paragraph or subdivision of said complaint is alleged.

Further answering and for a separate defense herein it alleges that it duly qualified as administrator of the estate of said deceased and proceeded to discharge its duties as such administrator under such appointment; that thereafter such proceedings were duly had in said probate court of Ramsey county, Minnesota, *and* that said estate was fully administrated and settled, and that this defendant duly made and filed its final account of such administration and

7 that the said final account was by probate court duly examined, settled and allowed and the residue of the property of said estate and of said deceased duly assigned and transferred to and vested in the next of kin and heirs of said deceased by said probate court and this defendant as such administrator duly discharged by said probate court long before the commencement of the above-entitled action, that after the said property and estate had been so duly assigned and transferred to and vested in said heirs and next of kin and the final account of this defendant so examined, settled and allowed and this defendant so discharged as administrator, and long before the commencement of the above-entitled action, this defendant duly delivered all the property and effects in its possession or under its control to the persons entitled

thereto, and that it is not administrator of the estate of the deceased and has not been, nor has it had in its possession or under its control any money, property or effects of said deceased or his said estate, since long prior to the commencement of the above-entitled action.

That by reason of the foregoing facts the plaintiff cannot maintain said action.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, or any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that said Sumner W. Matteson, being then a resident of the city of St. Paul in the State of Minnesota, on the 22nd day of July 1895, died in the said city of St. Paul leaving real and personal property in said Ramsey county and elsewhere in the State of Minnesota; that this defendant was duly appointed administrator of his said estate on September 3, 1895, by the probate court for said Ramsey county, as in the complaint alleged, and duly qualified as such and assumed the duties thereof, as hereinabove alleged, and that it had continuously since said day remained within the State of Minnesota; that the above-entitled action was not commenced until subsequent to the twentieth day of January, 1897, and the right to commence the above-entitled action was barred prior to that date.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, nor any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that at the time it was so appointed administrator of the estate of said deceased as in the complaint alleged, and letters of administration by said probate court to it issued, said probate court in accordance with the statute in such case made and provided, duly made an order limiting the time within which creditors might present claims against said deceased for examination and allowance to six months from the 3rd day of September, 1895, and appointing the first Monday in April, 1896, (being the 6th day of April, 1896) as the time when and the court-room of said court as the place where, said court would examine and adjust the claims and demands of all persons against said deceased; that notice was duly given to all creditors and all persons interested by duly publishing said order as by statute in such case made and provided; that notwithstanding said order and the due publication thereof; the plaintiff wholly failed and neglected to present the notes sued on in the complaint, or any claim on account thereof, to said probate court, or commence any action thereon in any court within the time limited in said order, or at the time therein fixed for hearing such claims, or at any time until after final settlement of said estate and the account of this defendant as such administrator, and that by reason of the premises the above-entitled action is barred.

8

Further answering, it admits on information and belief that said Sumner W. Matteson, on or about the 27th day of February, 1894, executed the two promissory notes in paragraph or subdivision III of said complaint described, and that said James H. Easton & Co. was a copartnership doing business at Decorah, Iowa, and that all

the (*manbers*) of said firm were residents and citizens of the State of Iowa, at all times stated in said complaint.

It alleges on information and belief that said promissory notes have each been fully paid and satisfied, and denies that the plaintiff is the owner of either of the same.

It denies that the plaintiff at the time alleged in the complaint or at any time purchased said notes or either of them for value before maturity, in the usual course of business without notice of any defense or defenses to the same, and alleges on information and belief that each of said notes were executed as to nine-sixteenths thereof solely for the accommodation of said James H. Easton & Co., and without consideration, and upon the express agreement and understanding between said deceased and said James H. Easton & Company that said deceased should not be held or bound to pay any portion thereof except seven-sixteenths thereof and that if the said notes were purchased by the plaintiff it took the same from said James H. Easton and Company with full knowledge and notice of the fact that each of said notes was as to nine-sixteenths thereof executed by said deceased for the accommodation of said James H. Easton & Company, and without consideration and of the said understanding and agreement — said deceased and said James H. Easton & Company.

9 It denies that there is or was at the time said action was commenced in its hands or under its control as administrator of the estate of said deceased any property, money or effects whatever which belonged in his lifetime to said deceased, and denies that the estate of said deceased is now in process of settlement in said probate court, and alleges that the same had been fully settled, probated and administered upon and discharged from said court long prior to the commencement of the above-entitled action and that this defendant long before the commencement of this action had been discharged as such administrator and was not at the time of the commencement of said action and is not now administrator of the estate of said deceased.

It admits that the plaintiff caused payment of said notes to be demanded of it subsequent to the time when said administration had been fully closed and this defendant discharged as such administrator and after it had turned over all money, property and effects of said deceased remaining in its hands to the persons entitled thereto, but denies that it made any demand upon it for payment of either of said notes prior to that time. It admits that it did not pay said notes or any portion thereof.

Except as hereinbefore expressly admitted it denies each and every allegation, matter and thing in said complaint contained, whether as therein alleged or otherwise.

Further answering it alleges, that if said notes or any part thereof, have not been paid and are held or owned by the plaintiff, it, the plaintiff, holds as collateral security therefor ten bonds of the Iowa and Minnesota Investment Company of the par value of five hundred dollars each, and that it is not entitled to be paid anything on

account of said notes until it shall have surrendered or exhausted the said collateral security.

Wherefore defendant prays that the plaintiff take nothing by its action, and that the defendant may recover costs and its disbursements in this action.

EDMUND S. DURMENT,
Attorney for Defendant.

Office: 411 & 410 N. Y. Life bldg. Residence: 825 Osceola Ave., St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson being first duly sworn on oath says that he is president of Security Trust Company the defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

EDWARD J. HODGSON.

Subscribed and sworn to before me on this 12th day of February, A. D. 1897.

EDMUND S. DURMENT,
Notary Public, Ramsey County, Minn.

Answer. Filed February 12th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the following stipulation was filed in the clerk's office of said court in the words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated and agreed by and between the parties and their respective attorneys hereto, that the said petitioner may have to and inclusive of the 20th day of March, 1897, in which to file reply to the answer of the defendant in the above-entitled cause.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Petitioner.

Stipulation. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the (*the*) following reply was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For reply to the answer of the defendant in the above-entitled action, the petitioner above named denies each and every allegation, matter and thing in said answer contained, and the whole thereof, except as admitted in the complaint herein, and as hereinafter admitted or qualified.

11 Petitioner admits that Sumner W. Matteson died at St. Paul, Minnesota on or about the 22nd day of July 1895, leaving a large amount of real and personal property in the county of Ramsey and elsewhere in the State of Minnesota, and that this defendant as such administrator came into the possession of all of such personal property; admits that this action was not commenced until the 22nd day of January 1897; admits that the probate court of Ramsey county made an order limiting the time within which creditors of said Matteson might present claims against said deceased for examination and allowance, to six months from the 3rd day of September, 1895, and appointed the first Monday of April, 1896, being the 6th day of April as the time when said court would examine and adjust said claims against said deceased, and that said notice was published in compliance with the order of the court; that the time limited by said court for the presentation of claims was less than the time allowed by the statute of the State of Minnesota for the presentation of such claims. But petitioner specifically denies that said order, or said publication of notice to creditors was duly made, or was made in accordance with the statute in such case made and provided, and charges the fact to be that, said order and said publication of notice to creditors were improperly and illegally made, were not in the accordance with the provisions of the statutes in such case made and provided; and were wholly null and void.

Petitioner admits that it did not present its claims in said petition set forth within the time stated in said order, and said notice, and that it had no knowledge, information or notice that any proceedings whatsoever had been instituted or commenced in said probate court, in any way affecting the estate of Sumner W. Matteson, deceased, until shortly before the commencement of the action herein.

Petitioner denies that any other or further payment had been made on said notes described in the complaint, other than in said complaint stated.

Petitioner further alleges that it has not, and never had had any knowledge or information as to any agreement or understanding between said Matteson, deceased, and James H. Easton & Company, as stated in said answer, or otherwise, and denies the same and the whole thereof, and denies that said notes, or either of them, or any

part thereof was executed for the accommodation of said James H. Easton & Company.

Petitioner admits that it holds certain bonds as collateral security to the notes set forth in the complaint herein, but alleges on
12 information and belief that said bonds are very little, if any, value and in any event, of value not in excess of the sum of two hundred and fifty dollars ($250,) and that complainant ever has been and now is ready and willing to surrender said bonds and all thereof, on payment of the notes set forth in the complaint herein.

Wherefore, petitioner asks judgment as demanded in the complaint herein.

STRINGER & SEYMOUR,
Attorneys for Petitioner,
Nat. Ger. Am. Bank Bldg., St. Paul, Minnesota.

Reply. Filed March 20th, 1897. Henry D. Lang, clerk.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

E. C. Stringer came before me personally and being first duly sworn, deposes and says that he is one of the attorneys for the petitioner in the above-entitled action and authorized to make this affidavit in its behalf. That he has read the foregoing reply and the same is true to the best of his knowledge, information and belief, and the reason why this affidavit of verification is not made by said petitioner, is that said petitioner and all of its officers are absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 19th day of March, 1897.
[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minn.

Thereafter and on the 5th day of January, 1899, the following stipulation was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated that the above-entitled cause be placed on the (calender) for the January A. D. 1899 term of said court without further notice.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation. Filed January 5th, 1899. Henry D. Lang, clerk.

13 Thereafter and on the 18th day of January, 1899, the following stipulation of facts and waiver of jury trial was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOUISVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The parties to the above-entitled action have stipulated and agreed that for the purpose of this action the following facts shall be taken to be true, and shall be spread upon the records, and the said action be tried and determined on such stipulation of facts by the court without a jury, a jury being waived by the parties.

The allegations contained in subdivisions I, II, III of the petition or declared in the above-entitled action are true, (being all of said petition or declaration preceding the subdivision thereof marked IV,) except that Sumner W. Matteson having died July 22, 1895, did not after that date reside in St. Paul Minnesota.

Sumner W. Matteson, mentioned in the pleadings, was a resident and citizen of the State of Minnesota from prior to January 1, 1894, until his death, during that time residing at the city of St. Paul in Ramsey county, Minnesota. He died at the said city of St. Paul intestate, a resident thereof, and leaving real and personal property there situate on July 22, 1895.

Thereafter such proceedings were duly had in the probate court for Ramsey county, Minnesota, that said Security Trust Company, mentioned in the petition or declaration was duly appointed administrator of the estate of said deceased, and letters of administration issued out of said court thereon to it as such administrator, and it duly qualified and entered upon its duties as such administrator on September 3, 1895. Thereafter and on September 3, 1895 said court made and entered the following order with reference to filing claims against said deceased, viz:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

Letters of administration on the estate of Sumner W. Matteson, deceased, late of the city of St. Paul, of the county of Ramsey,
14 and State of Minnesota, being granted to the Security Trust Company, a Minnesota corporation.

It is ordered that six months be and the same hereby is allowed from and after the date of this order, in which all persons having claims or demands against the said deceased are required to file the same in the probate court of said county, for examination and allowance, or be forever barred.

It is further ordered, that the first Monday of April, 1896, a- 10 o'clock a. m., at a general term of said probate court to be held at the court-house in the city of St. Paul, in said county, be and the same hereby is appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper and published in said county.

Dated at St. Paul, this 3rd day of September, 1895.

By the court,

[s. s.] (Signed) G. WILLRICH,
Judge of Probate."

Said order was published in the same manner and length of time as required by statute for publication of an order limiting time for presenting claims against a deceased person for examination and allowance, it having been published in a legal newspaper in said county on September 10, 17, 24, 1895, and proof of such publication in due form was filed in said court in due season. The administrator duly filed an inventory of the estate of said deceased, and the same was duly appraised. That said defendant as such administrator received and took into its possession assets, funds and property of said estate largely in excess of all claims filed and allowed against said estate in said probate court, and the indebtedness in the complaint herein described, and the expenses of administration. On March 31, 1896, the administrator filed its account of its administration, and its petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto by law. Said petition was duly verified on March 31st, 1896, and is as follows:

"STATE OF MINNESOTA, }
Ramsey County, } *ss:*

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the judge of probate in and for said county:

The petition of Security Trust Company as administrator of said estate respectfully represents that it has fully administered
15 said estate, and paid all the debts allowed by the court against the estate of said deceased, and the expenses of administra-

tion, as will appear by its final account of its administration, and the vouchers therein referred to, and your petitioner would therefore pray that a time and place be fixed for examining and allowing said account, and for the assignment, and distribution of the residue of said estate to the parties entitled thereto by law, and that notice thereof be given, agreeably to the statute in such case made and provided, and (*ad*) this court in its discretion may deem proper.

Dated at St. Paul, this 31st day of March, A. D. 1896.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President.*"

Said court made and entered an order for hearing said petition and notice of such hearing was given as by law required, and proof thereof filed in due season. Said court at the time fixed for such hearing heard the petition and examined said final account and thereupon made and entered an order allowing said final account and made and entered a final decree distributing all the estate of said deceased in Minnesota to the widow and children of said deceased. The order allowing said final account was as follows:

STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In re Estate of SUMNER W. MATTESON, Deceased.

In the matter of the settlement of the final account of Security Trust Company as administrator of said estate.

Pursuant to the order of this court made and entered in said matter on the 27th day of April, 1896, the account of the Security Trust Company as administrator of said estate came on this day to be examined, and the due proof of the publication of the notice of such examination in the matter required by said order of this court, being made and filed herein and the said administrator appearing by its secretary and treasurer, Charles D. Matteson and its attorneys Bigelow and Taylor, whereupon the said probate court proceeded to examine the said administrator through its secretary and treasurer upon oath, and the vouchers and accounts of the said administrator having been duly filed and examined.

And it appearing that the said administrator has accounted for every part of the estate of Sumner W. Matteson deceased, and that no profit has been made by it of any increase thereof, and the accounts of the said administrator having been finally settled and adjusted, and a summary statement of the same as finally set-
16 tled allowed, and adjusted by this court, being below and herewith recorded; on motion of said administrator by its said attorneys.

Ordered that the said accounts be and the same are finally settled and allowed, as filed and adjusted in and by this court.

Summary Statement.

In same matter, same term.

The judge of probate of said Ramsey county, makes and records this summary statement of the final accounts of Security Trust Company as administrator of said estate of Sumner W. Matteson as adjusted, settled and allowed by said probate court.

The debit side of said account.....	$11,981.01
The credit " " " "	11,412.58
Balance due.....	$568.43

[L. S.] (Signed) G. WILLRICH,
Judge of Probate."

The final decree was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

It appearing to the court now here, on satisfactory proofs and the evidence, that the funeral charges, expenses of last sickness of said deceased, and the cost of the administration of said estate, have been fully paid and that all debts existing against said deceased, *are* allowed by the court pursuant to law, have also been fully paid and satisfied and that said estate has been fully administered, as by the final account of the Security Trust Company, administrator of said estate heretofore duly audited and allowed by this court pursuant to due notice given and served will appear, reference being had thereto;

And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the person thereto entitled by law, has likewise been given and served pursuant to the law in such case made and provided and decided;

And it further appearing, that said deceased died intestate, and that the residue of said estate consists of the following-described real estate, situate, lying and being in the county of Ramsey and State of Minnesota, to wit: (Here is inserted the description of the real property in Minnesota.)

17 And it further appearing that the residue of the personal property of said estate consists of the following personal property, to wit:

Stocks and Bonds.

Certificate No 70, for 500 shares of capital stock in the Security Trust Company of St. Paul, Minn.

Certificate 211, for 10 shares of capital stock of First National Bank of Decorah, Iowa.

Certificate No. 5, for 362 shares: Certificate No. 34, for 67 5/8 and certificate No. 50 for 70 2/8 shares of the capital stock of the Duluth Union Land Co. of St. Paul, Minnesota.

Certificates 61 to 70 inclusive for 20 shares each, and bonds Nos. 18, 19, 25, 26, 39, 40, 43, 44, 49, 50, 63, 64, 70, 71, 76, 77, 85, 86, 92, 93, 98, 99, 102, 103, 116, 117, of the Iowa & Minnesota Investment Company of Decorah, Iowa.

Certificate 58 for 2,178 shares of the capital stock of the Buffalo Land & Exploration Company of Duluth, Minnesota.

Certificate 78 for 25 shares, stock of the Grand Opera House Company, of Decorah, Iowa.

Bills Receivable.

Mortgage of Ingberg Casperson, dated —— — secured on lot 10, block 38, original town of Decorah.

Mortgage of M. O. Dalvey, dated June 16, 1893, secured on lot 3, block 2, Matteson's addition to Decorah.

Mortgage of Frank M. Hughes, dated November 15th, 1890, secured on an undivided 1/6 of lot seven block 19, in the original town of Decorah.

Note of W. B. Richard, of New York city, due Dec. 1st, 1893, for $1,000.

Cash on hand five hundred and sixty-eight dollars and forty-three cents (568.43.)

And it further appearing that the said Sumner W. Matteson left him surviving as his heirs-at-law and entitled to share in his said estate, his wife, Louise M. Matteson, and his children, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, and no others.

Now therefore, on the petition of said Security Trust Company as said administrator, and pursuant to due notice and the law in such case provided,

It is ordered, adjudged and decreed, and this court, by virtue of the power and authority vested in the same by law, doth hereby order, adjudge and decree, that all and singular of the above
18 described real and personal estate, and all other the estate of said deceased in the State of Minnesota, be and the same is hereby assigned to and vested in the said Louise M. Matteson, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, in the following shares and proportions, to wit:

To Louise M. Matteson, one undivided one-third (1/3) of all of said real and personal property, to Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, each one undivided one-ninth (1/9) of all of said real and personal property, without prejudice however to any lawful conveyance of said real estate or any part thereof by said persons or any of them.

To have and to hold the same together with all the heredita-

ments and appurtenances thereunto belonging or in anywise appertaining to the above-named persons and their heirs and assigns forever.

By the court,

[L. S.] G. WILLRICH,
Judge of Probate."

No order or decree has been entered in said probate court discharging the said administrator from its said trust other than the said order allowing its final account and said final decree which are above set out.

Thereafter and on November 21, 1896, said Security Trust Company filed the following petition, which was duly verified on November 20, 1896:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

The petition of Security Trust Company, a corporation, respectfully shows to the court:

First. That it was the duly appointed acting and qualified administrator of the estate of Sumner W. Matteson, deceased.

Second. That on the 27th day of April, 1896, said court made and entered its final decree in said estate, discharging petitioner as administrator, and assigning the property belonging to said estate to the persons by law entitled to the same.

Third. That in drawing said decree certain clerical errors were made, by reason of which parcels of real estate were therein erroneously described, and certain other parcels of real estate were omitted therefrom.

Fourth. That the said erroneous descriptions, with the corresponding proper corrections are as follows:

19 (Errors and corrections are here set out at length in the original petition.)

Fifth. That the parcels and lots of real estate omitted from the said decree as aforesaid are as follows, to wit:

(Here the original petition sets out the particular description of the omitted tracts.)

Wherefore, your petitioner prays that this court make and enter an order amending and correcting the said final decrees by changing the said erroneous descriptions to the proper and correct descriptions, as hereinbefore set forth, and by adding to the said decree the said omitted lots or parcels of real estate.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *Pres't.*"

Thereafter and on November 21, 1896, said court made and filed the following order amending said final decree:

"State of Minnesota, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of Sumner W. Matteson, Deceased.

On reading and filing the petition of the Security Trust Company in the above-entitled matter, filed therein on the 21st day of November, 1896, and it appearing to my satisfaction that the said petitioner was the duly appointed, acting and qualified administrator of the estate of Sumner W. Matteson, deceased, and that in drawing the final decree made and entered in said above-entitled matter, on the 27th day of April 1896, certain clerical errors made by reason of which certain parcels of real estate were therein erroneously described and certain other parcels of real estate were omitted therefrom, and that the said erroneous descriptions with the corresponding proper corrections are as follows:

(Here the particular errors and corrections are set out.)

And that the said parcels and lots of real estate omitted from the said decree as aforesaid, are as follows, to wit:

The undivided one-eighth (⅛) of the southeast one-quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section thirty-two (32) township forty-nine (49) range fifteen (15): Also lots four (4) five (5) six (6) and ten (10) in block (1): Lots five (5) six (6) seven (7) and eight (8) in block three (3): Lots eleven (11) and twelve (12) in block fourteen (14) and lot fifteen (15) in block seventeen (17) all of West End addition to Duluth, according to the recorded plat thereof of record and on file in the office of the register of deeds in and for said county of St. Louis.

It is ordered that the said final decree be and the same hereby is amended and corrected by changing the said erroneous descriptions to the correct descriptions, as hereinbefore set forth, and by adding to the said decree the lots and parcels of land omitted therefrom as hereinbefore set forth.

Dated this 21st day of November, A. D. 1896.

[L. S.] G. WILLRICH,
Judge of Probate."

That the major portion of the omitted descriptions were not contained in the inventory filed.

At all times herein and in the pleadings mentioned, Fred S. Easton was the principal stockholder and cashier of the plaintiff bank, and representing it, purchased the said note for it from James H. Easton & Co. He knew that said Sumner W. Matteson was a resident of St. Paul, Minnesota, and several times in 1894 subsequently to the maturity of said notes, he as cashier of said bank wrote to said Sumner W. Matteson, addressing him at St. Paul, Minnesota, urging him to take up said notes.

As early as August 8, 1895, he knew said Sumner W. Matteson had died at St. Paul, Minnesota, a resident of that city. On August

8, 1895, he wrote to S. W. Matteson, Jr. (a son of the deceased) addressing him at said city of St. Paul, the following letter:

DECORAH, IOWA, *Aug. 8th*, 1895.

S. W. Matteson, Jr., St. Paul, Minn.

DEAR SIR: The Black River Nat'l Bank of Lowville, with which I am connected, holds two notes made by S. W. Matteson and endorsed by James H. Easton & Co., which bear date Feb'y 27th, 1894, and each for $2,500, and 8 per cent. interest from date, payable 4 mos. from date, due June 30th, 1894. We endeavored to have them taken up and paid in part, but have not been successful. I have written to your father several times about having them arranged and he replied he would have J. H. E. & Co. attend to the matter. After considerable correspondence, I obtained payment of the interest on the notes to November 24, 1894, and they will still have the principal $5,000 and 8 per cent. interest since Nov. 24, '94, yet unpaid. It was my intention to see your father when I passed thro' St. Paul en route from Duluth here, but it rained very hard and I could not get out but would not have seen him as he was ill at that time. Mr. J. H. Easton advises me that you have made arrangements, or arrangements were made by your father prior to his decease, to raise $6,000 and pay up this paper and other of similar nature. As a national bank we are not permitted to have paper past due and if overdue 6 mos. must be charged off as 'bad debt,' and more than 6 mos. has elapsed since the notes in question matured and we must have them paid. I have requested J. H. E. & Co. to take them up, but they say that they have now more of the same paper than they can take care of, and I must have the maker take up the notes. Our bank discounted the paper a long time ago and our condition is such that the money is necessary for our bank's demands and we have declined to carry it any longer for several months. I would have made my wishes known to you when here, but refrained from so doing under the circumstances which brought you to Decorah.

21

I wish you would make your arrangements to have these notes paid and taken up out of the money which was borrowed by your father for the purpose of reducing this indebtedness. It is over one year since the paper fell due and I have waited patiently for the payment of the same, not desiring to crowd payment, as we had a high regard for your father.

Please write me at earliest opportunity what I may expect in this connection. Would like to hear from you here by early mail, as I do not expect to remain here but a few days.

Yours truly,

F. S. EASTON,
c/o 1st Nat'l Bank, Decorah, Iowa.

Thereafter on October 22, 1895, said Easton as such cashier wrote a letter to Chas. D. Matteson, a son of the deceased, addressed to him in care of the Security Trust Company at St. Paul, Minnesota, urging payment of said notes and stating that unless paid, under instructions from the Comptroller of the Currency the bank would have to

institute suit for collection, or charge them to profit and loss. The letter was written from Lowville, N. Y., on paper of said bank, having the letter-head of the bank printed on it and the name of said Fred S. Easton as cashier a part of the letter-head, and on November 25, 1895, he as such cashier wrote another letter of like import, to said Charles D. Matteson, addressed to him in care of Security Trust Company at said city of St. Paul, which letter was written on like paper of said bank. In each of said letters it was stated that said notes were held and owned by the petitioner bank.

Said Fred S. Easton had not, nor had any officer of said bank, any actual knowledge or information that administration had been taken out in Minnesota on the estate of said deceased, nor that said Security Trust Company had been appointed administrator of said deceased, until December 26th, 1896, and he did not, nor did any officer of said bank, prior to that date make any inquiries from any member of the family of said deceased nor from any officer of said probate court, nor make any examination of the files or records of said court to learn whether administration had been taken out on the
22 estate of said deceased in Minnesota. No steps were ever taken by said bank or by any one in its behalf to file its claim in the said probate court prior to Jan. 4, 1897, nor to commence any action in said State or United States court in the State of Minnesota to prove its claim as a claim against the deceased or to recover an account of any of said notes until January 22, 1897, when it commenced this action.

Said Easton knew that administration had been taken out on the estate of said deceased in Iowa (he having at his death left property in Iowa) and that said Chas. D. Matteson had been appointed administrator of the estate of said deceased in Iowa by the proper Iowa court.

He caused the claim of said bank on said notes to be filed in said Iowa court on August 19, 1896, as a claim against the deceased and supposed that nothing further was necessary to entitle the bank to share in the estate of the deceased wherever situate. Knowing that administration had been commenced in Iowa he supposed that it would not be necessary to administer on the estate of said deceased in any other State, and until December 26, 1896, had no knowledge or information that any administration had been commenced elsewhere than in Iowa.

Said bank caused said notes to be presented to Security Trust Company in January, 1897, before the commencement of this action, and demanded that it pay the same out of the estate of said deceased, and payment was refused. No part of said notes had been paid except as alleged in the petition or declaration.

The Security Trust Company did not at any time make any written assignment or transfer of any of the property, described in said final decree to any person named as a distributee in said final decree, except the certificate of stock of the Duluth Union Land Co. described in said decree of distribution, which stock was on the 23rd day of December, 1896, assigned in writing by said administrator. Such assignment was on December 23, 1896, made on the back of

said certificate and signed "Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased," at the request of said Chas. D. Matteson for the reason that when said Matteson presented said certificate to the secretary of said Duluth Union Land Co. and requested that certificates in lieu thereof should be issued to the distributees named in said final decree said secretary refused to make such transfer unless such assignment should be endorsed on said stock.

But within a few days after said final decree had been made and long before December first, 1896, said Chas. D. Matteson who
23 was secretary and treasurer of Security Trust Company, at all times herein mentioned, and also one of the distributees named in said final decree, removed all securities and papers in possession of said Security Trust Company as such administrator from the files of said Security Trust Company where they had been kept by it as administrator, and placed them in a box or receptacle which he kept, and for long before that time had kept in the vault of said company for his personal papers, and papers in his personal possession, except certain stocks and securities which Security Trust Company as collateral security for indebtedness owed to it by said Sumner W. Matteson held prior to his death, and which it has continued to hold as such collateral to the present time, such indebtedness still remaining unpaid. The book in which the Security Trust Company kept entries of the proceedings in the probate of said estate, was in the usual course of business, shortly after the entry of said final decree, and long before December 1, 1896, written up, and the following entries made after the printed words on the page of said book containing entries relative to said estate viz:

Application for discharge (in print). March 31, 1896, (in writing.)
Discharged (in print) April 27, 1896, (in writing.)

Red-ink line followed on the page so ruled as to leave no space for further entries on said page.

The cash on hand at the time of filing the final account was paid out by Security Trust Company under directions from said Chas. D. Matteson for taxes and other expenses relating to property of said distributees, and early in June, 1896, it paid to said Chas. D. Matteson by its check, a balance of less than fifty dollars which remained unexpended according to the account kept on its books in which account was entered the moneys it had received and disbursed as such administrator, and said account was then closed out on its books. All such properties thereafter remained in the said private receptacle of said Chas. D. Matteson except as he may have delivered them to persons other than Security Trust Company, and written assignments and conveyances of all the said property were made by the distributees to the Matteson estate incorporate (a corporation organized under the laws of Minnesota) prior to December 15, 1896.

On November 19, 1895, Security Trust Company as such administrator entered into written contract with James H. Easton relative to the respective rights and liabilities of said James H. Easton and said deceased growing out of certain notes or obligations
24 therein particularly described, among which the notes in the

complaint were specifically described but it was stated in said contract that they were held by Fred S. Easton.

That on the 6th day of April, 1896, Warner, Richardson & Lawrence filed in said court their duly verified claim against said estate, amounting to one hundred nine and 20/100 dollars ($109.20) on which claim is endorsed in the handwriting of Charles D. Matteson the following:

"We hereby allow the within claim this 20th day of May, '96. Security Trust Co., by Chas. D. Matteson, sec'y," and which said claim was thereafter paid in full.

That on January 4, 1897, a duly verified petition was made and presented to said probate court by said Black River national bank, stating in detail the claim of said bank against said estate and also stating that said bank had no knowledge or information of any proceedings in said probate court in said estate until December 26, 1896, and praying leave to file its claim in said court against said estate, and praying that decree of distribution be vacated and said claim as allowed be paid out of the assets of said estate. That such proceedings were thereafter had that said court issued an order to said administrator and all persons named in said decree of distribution to show cause why said petition should not be granted, which order was served as prescribed in said order; and thereafter said court dismissed said order to show cause and denied said petition.

Said administrator did not notify said Fred S. Easton, nor said petitioner bank, of the said order to file claims except by publication of said order as above stated and did not at any time notify said Fred S. Easton, nor said petitioner bank of the commencement of, or of the pendency of said probate proceedings except by publication of the notices required by statute.

Edward J. Hodgson and Chas. D. Matteson were respectively president and secretary and treasurer of said Security Trust Company at all time herein mentioned and they had exclusive supervision and management of said administration for said company, but said Chas. D. Matteson principally attended to all the details thereof.

Said deceased resided in the State of Iowa until November, 1891 and from that date until his death at St. Paul, Minnesota.

Said Chas. D. Matteson was appointed administrator of the estate in Iowa by said Iowa court above mentioned in September, 1895.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
For Defendant.

Jan. 16, 1899.

25 Stipulation of facts, waiver of trial by jury. Filed, January 18th, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April, 1899, the following findings and order for judgment was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased.

This case being regularly on the docket, came on for hearing at the January A. D. 1899, term of this court holden at St. Paul, in said third division of said district; and trial by jury having been duly waived by the respective parties it was tried by the court without a jury on Wednesday, April 5, 1899, in said term, the plaintiff appearing by Stringer and Seymour, its attorneys, and the defendant by E. S. Durment its attorney. And now having heard the arguments of counsel for the respective parties, and duly considered the pleadings and the stipulation of facts presented and received in evidence, it is found by the court that the plaintiff, The Black River National Bank of Lowville is entitled to recover of the defendant The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, the amount claimed by said plaintiff in its complaint herein with costs, to be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased; said judgment to be duly certified by this court to the probate court of Ramsey county, Minnesota, as a claim duly proved, established and allowed against the said estate of Sumner W. Matteson, deceased.

The clerk will from said complaint compute the amount which the plaintiff is, at the date hereof, entitled to recover under this finding, and enter judgment accordingly.

April 15, 1899.

WM. LOCHREN, *Judge*.

Findings and order for judgment. Filed, April 17, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April, 1899, the following stipulation as to costs was filed in the clerk's office of said court in words and figures following, to wit:

26 Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Plaintiff,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Plaintiff's Costs and Disbursements.

Docket fee	$10.00
U. S. marshal's fee	2.06
Clerk's fees, to be added, plaintiff's fees	11.95
	$24.01

It is hereby stipulated and agreed that the foregoing costs may be taxed and allowed by the clerk of said court and inserted in the judgment in the above-entitled cause (with*in*) further notice.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorney for Plaintiff.

Stipulation as to costs. Filed April 17, 1899. Henry D. Lang, clerk.

And thereafter on the same day the following order was entered of record in said cause, (judgment for plaintiff) in words and figures following, to wit:

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1899.

APRIL 17TH, 1899.

BLACK RIVER NATIONAL BANK OF LOWVILLE
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased. } E. Law 1165.

This cause having been heretofore tried by the court without a jury and the court having this day filed its findings.

Therefore it is considered, ordered and adjudged, in accordance therewith, that the plaintiff herein Black River National Bank of Lowville, do have and recover of — from the defendant The Security Trust Company of St. Paul as administrator of the estate of Sumner W. Matteson, deceased, the sum of six thousand seven hundred and fifty-eight dollars and eighty-eight cents ($6,758.88) the amount claimed in the complaint with interest to this date, together
27 with the sum of twenty-four dollars and one cent ($24.01) the cost which the plaintiff is entitled to recover in this action in accordance with a stipulation duly signed by the attorneys for the respective parties herein and this day filed, amounting in the aggregate to the sum of six thousand, seven hundred eighty-two dollars and eighty-nine cents ($6,782.89) and that said sum be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased.

Ordered further that this judgment be duly certified by this court to the probate court of Ramsey county as a claim duly approved, established and allowed against the estate of Sumner W. Matteson, deceased.

Judgment-roll, signed this 17th day of April, A. D. 1899.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy.*

Damages	$6,758.88
Costs	24.01
Total	$6,782.89

Judgment-roll. Filed April 17th, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on October 14th, 1899, the following assignment of errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The defendant in the above-entitled action says that in the record and proceedings in said action, and also in the rendering of the judgment therein, there is manifest error in the particulars hereinafter specified, and assigns as error committed by the court in the trial of said cause for which it asks a reversal on error, the following:

1. The court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records in favor of the defendant.

3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

28 4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

Wherefore the said defendant, the plaintiff in error, prays that said judgment be reversed.

EDMUND S. DURMENT,
Attorney for Defendant, Plaintiff in Error.

Assignment of errors. Filed, October 14th, 1899. Henry D. Lang, clerk.

And on the same day the following bond of appeal was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Know all men by these presents, that we, Security Trust Company defendant in the above-entitled action, as principal, and C. E. Dickerson and Chas. D. Matteson as sureties, are held and firmly bound unto Black River National Bank of Lowville, the plaintiff in the above-entitled action, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, its successors or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, and the successors of said Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 14th day of October, A. D. 1899.

The condition of this obligation is such, that whereas, a final judgment was rendered and entered in the above-entitled action in favor of the plaintiff and against the said defendant on the 17th day of April, 1899, and the said defendant has duly made an assignment of errors and is about to apply for a writ of error to issue in said court in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the United States circuit court of appeals for the eighth judicial circuit:

29 Now therefore, if said writ of error shall be allowed and said defendant shall prosecute its writ to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said defendant has caused this bond to be executed in its corporate name and its corporate seal to be hereto affixed, and the said sureties have hereto set their hands and seals this 14th day of October, A. D. 1899.

SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President, and*
CHAS. D. MATTESON, *Secretary.*
C. E. DICKERSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
W. J. DESMOND.
H. A. PRESLER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October, A. D. 1899, came before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known, and who

being by me severally duly sworn on oath did say, that he the said Edward J. Hodgson is the president, and the said Chas. D. Matteson, is the secretary of said Security Trust Company, a corporation and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto affixed is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared C. E. Dickerson and Chas. D. Matteson two of the persons who executed the foregoing bond as sureties thereon to me personally known to be the same persons described in and who executed the same as sureties, and each severally acknowledged the same to be his own free act and deed.

Witness my hand and official seal this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October A. D. 1899, came before me personally C. E. Dickerson and Chas. D. Matteson and being by me severally duly sworn each for himself doth depose and say, that he is the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

C. E. DICKERSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me on this 14th day of October A. D. 1891.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minnesota.

Bond on Appeal.

I hereby approve of the within bond and the sureties thereon, dated October 14th, 1899.

WALTER H. SANBORN,
Circuit Judge.

Filed October 14th, 1899.

HENRY D. LANG, *Clerk.*

And on the same day the following petition for writ (or) errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Now comes the defendant above named and says, that on the 17th day of April, 1899, the above-entitled court entered judgment, in the above-entitled action in favor of the plaintiff against the defendant, which judgment was on the merits and is a final judgment, and in which judgment and proceedings prior thereto in said action, certain errors were committed to the prejudice of the said defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said defendant prays that a writ of error may issue in this behalf to the United States circuit court of appeals for the eighth circuit for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to said circuit court of appeals.

EDMUND S. DURMENT,
Attorney for Defendant.

Writ of error is allowed as prayed for in the foregoing petition, on this 14th day of October, 1899.

WALTER H. SANBORN,
Circuit Judge for the United States Circuit Court for the District of Minnesota, Third Division.

31 Petition for writ of error. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following writ of errors was issued in said cause, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit — of the United States for the district of Minnesota, third division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the January term, 1899, thereof, between Black River National Bank of Lowville, plaintiff, and Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, defendant, a manifest error hath happened, to the great damage of the said Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 12th day of December, A. D. 1899, to the end that the record and proceedings aforesaid, being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of October A. D. 1899. Issued at office in St. Paul, Minnesota, with the seal of the circuit court of the United States for the district of Minnesota, third division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by—
WALTER H. SANBORN, *Judge.*

32 UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I hereto subscribe my name and affix the seal of the circuit court of the United States for the district of Minnesota, third division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Entered 1165. E. law. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter, and on the same day the following citation was issued and returned on the 16th day of October, 1899, with due proof of service thereon, to wit:

The United States of America to Black River National Bank of Lowville:

You are hereby cited and admonished to appear in the United States circuit court of appeals for the eighth circuit at the city of St.

Louis, Missouri, on the 12 day of December A. D. 1899, pursuant to a writ of error filed in the office of the clerk of the United States circuit court for the district of Minnesota, third division, wherein Security Trust Company (defendant in an action brought by you against Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased), is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said circuit court this 14 day of October, A. D. 1899.

WALTER H. SANBORN,
Judge of United States Circuit Court,
Eighth Judicial Circuit.

Entered 1165 E. law. United States circuit court, district of Minnesota. Third division. Black River National Bank of Lowville, petitioner, *vs.* Security Trust Company, as administrator, etc., defendant. Citation. Due service of the within citation is hereby admitted Oct. 16, 1899. Stringer & Seymour, (Edward
33 C. Stringer, McNeil V. Seymour), attorneys for plaintiff. Filed October 16th, 1899. Henry D. Lang, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for eighth circuit, that the foregoing, consisting of 58 pages, numbered consecutively from 1 to 58, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of November, A. D. 1899.

HENRY D. LANG, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Nov. 16, 1899.

JOHN D. JORDAN, *Clerk.*

34 (*Appearance for Plaintiff in Error.*)

And on the sixteenth day of November, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of

said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

The clerk will enter our appearance as counsel for the plaintiff in error.

EDMUND S. DURMENT.
ALBERT R. MOORE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1356. The Security Trust Co., as adm. of the estate of Sumner W. Matteson, dec., pl'ff in error, *vs.* Black River National Bank of Lowville. Appearance. Filed Nov. 16, 1899. John D. Jordan, clerk. Edmund S. Durment, Albert R. Moore, counsel for plaintiff in error.

(*Appearance for Defendant in Error.*)

And on the sixth day of February, A. D. 1900, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

35 SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

The clerk will enter my appearance as counsel for the defendant in error.

EDWARD C. STRINGER.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1900. No. 1356. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* Black River National Bank of Lowville. Appearance. Filed Feb. 6, 1900. John D. Jordan, clerk. Edward C. Stringer, counsel for def't in error.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *May* 14, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. S. Durment for plaintiff in error, continued by Mr. E. C. Stringer for defendant in error, and concluded by Mr. E. S. Durment for plaintiff in error.

Thereupon this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventeenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed in said cause, in the following words, to wit:

36 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1900.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error. } No. 1356. In Error to the Circuit Court of the United States for the District of Minnesota.

Mr. Edmund S. Durment, (Mr. Albert E. Moore was with him on the brief) for the plaintiff in error.

Mr. Edward C. Stringer (Mr. McNeil V. Seymour was with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

THAYER, *Circuit Judge:*

This case involves the same questions which were considered and decided in the case of Security Trust Company, as administrator of Sumner W. Matteson, deceased, *vs.* William H. Dent, as receiver of the First National Bank of Decorah. The judgment below is accordingly affirmed on the authority of that case.

Filed October 17, 1900.

37 (*Judgment.*)

And on the seventeenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *October* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that the Black River National Bank of Lowville have and recover against the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, the sum of twenty dollars for its costs herein.

October 17, 1900.

(*Petition for Rehearing.*)

And on the twenty-eighth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

38 United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error. } No. 1356.

The plaintiff in error respectfully asks that a reargument of the above-entitled cause be granted as to the propositions, and for the reasons, following:

1. The proposition that the final settlement and distribution in the probate court barred the action in the Federal court.

Even admitting, as said in your opinion, that the Federal
39 court must be conceded the same power, as respects a claim of a non-resident creditor, to allow it within eighteen months,

which is conferred on probate courts of the State, the result of your decision affirming the judgment of the circuit court does not follow. Your decision claims for the Federal courts other and greater rights in that respect than the probate court has. Under the statute (cited in your opinion) the probate court has authority to allow the claim, only prior to final settlement and within eighteen months. It was conceded on the argument, is not denied in your opinion, and we think clearly is true, that at the time the action was commenced in the circuit court, the probate court, because of the final settlement of the estate, was without power to allow the claim had it been presented in that court. The indebtedness was incurred by the deceased, while a resident of Minnesota, and while the present statutory provisions as to the disposition of his property in case of death were in force. The plaintiff's right against the estate of the decedent in Minnesota must depend on the law of Minnesota. How, then, can it be that the Federal court can allow a claim against that property which neither the State court of probate, nor any other State court, had power to allow in case the plaintiff had resorted to it?

To say that the right of a non-resident creditor to sue in the Federal court cannot be made to depend on the length of time a probate court happens to allow for making a final settlement, or the time a local court chances to approve a final settlement,
40 when the time rests in the discretion of the court and is largely a matter of convenience, leaves out of consideration several important things. That possibly would be true, if by the statute it were made wholly a matter of discretion of the local court, but not when the statute gives absolutely a reasonable time for commencing suit, and confines the exercise of discretion to a period after the expiration of the reasonable time fixed by the statute. By the statute six months within which to sue is given absolutely. The court has no discretion to shorten the time. But, that the statute makes the right of the creditor to share in the estate after the lapse of the fixed reasonable time conditional upon his claim being presented while the property is yet in the control of the probate court, cannot be so objectionable as to warrant the court in disregarding the condition and thus confer a right which the statute in plain terms denies. Such provision is absolutely essential to practical administration of the estates of deceased persons.

We submit, also, that the court has failed to give due consideration to the nature and object of administration proceedings. The entire property of the decedent is in the possession of the probate court for the purpose of distribution. The suit to establish the claim is ancillary, in aid of the administration proceeding. It is a suit in fact (though not in form) against the property, for the purpose of determining whether it is one entitled to share in the distribution.

The probate court has sole jurisdiction to make the distribu-
41 tion and to determine when it shall be made. When lawfully it has once made the distribution there no longer can be any right to share in the distribution. This distribution, made after notice to the world, is binding on the world (including the

Federal courts) because it is a decree *in rem* disposing of property in possession of the court.

The effect of your decision is to deny the right of the State to provide for the administration of the estates of its deceased citizens within the State, for, if it cannot authorize its courts to determine when an estate has been fully administered and to distribute it free from claims it is without power to administer.

2. The proposition that the decree of distribution and the settlement of the final account did end the administration and divest the probate court of jurisdiction.

Your opinion on this proposition:

1. Fails to give credit to the final decree (a judgment of a court of competent jurisdiction) which declares that the estate has been fully administered, and assigns not only the property particularly described, but also "all other the property of the deceased, in the State of Minnesota."

2. Erroneously* assumes that the probate court in amending the final decree assumed that its jurisdiction to administer the estate still continued. It simply corrected its records pursuant to authority, given in Gen. St. 1894, sec. 4730, to correct or amend its records at any time. Being a court of record it had the right to do
42 so even in the absence of the statute. (Black on Judgments, vol. 1, sec. 161.) In doing so it did not exercise any jurisdiction in the probate or administration of the estate. It simply exercised a right to make its record conform to the facts. It added nothing to its final decree, and took no step in the administration, but simply particularized the property theretofore assigned as "all other the property of the deceased, in the State of Minnesota."

3. Refuses to give credit to the decisions of the supreme court of Minnesota, in that it erroneously assumes that the jurisdiction of the probate court continued for the purpose of enforcing its order of distribution, when in fact it is settled in this State that the probate court has no jurisdiction to enforce its order of distribution. See 61 Minn. 91, Schmidt *v.* Stark: "The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees, or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley *v.* Hamilton, 37 Minn. 160, 33 N. W. 912; Gary Probate Law, secs. 48, 612*b*, 629, 633."

43 While the decision in the case is of importance to the parties directly interested, it is of much greater moment. It is so

* That the probate court did not understand that it had any further jurisdiction is shown by the fact (not shown in the record, but true) that before bringing suit in the circuit court the Black River national bank applied to the probate court to have the decree of distribution vacated and for leave to file its claim, and the application was denied on the ground that the court no longer had jurisdiction.

contrary to what has been the general understanding in Minnesota of the Minnesota law, and to us seems so inevitably to lead to widespread confusion and litigation in this State, as to require us to apply for a reargument of the case, and to warrant the court in granting the application.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

I have examined the opinion handed down in the foregoing entitled action and the briefs of counsel, as well as the record. I am of opinion that there ought to be a reargument of the case on the propositions stated in the foregoing petition and for the reasons therein stated. Said petition is made in good faith and on the advice of the undersigned.

EDMUND S. DURMENT,
Of Counsel for Plaintiff in Error.

(Endorsed:) Petition for reargument. Filed Nov. 28, 1900. John D. Jordan, clerk.

41 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order denying the petition for rehearing, in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

(*Order Staying Mandate.*)

And on the twenty-first day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order staying mandate in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

FRIDAY, *December* 21, 1900.

SECURITY TRUST COMPANY, Administrator, etc., Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

For good cause shown and on application of counsel for plaintiff in error,

It is now here ordered that the mandate in this cause be, and the same is hereby stayed for a period of thirty days from this
45 date pending an application to the Supreme Court of the United States by counsel for plaintiff in error for a writ of certiorari in the above-entitled cause.

December 21, 1900.

46 (*Clerk's Certificate to Transcript.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing forty-five pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in the case of Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, *vs.* The Black River National Bank of Lowville, No. 1356, May term, 1900, as full true and complete as the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this third day of January, A. D. 1901.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

46½ [Endorsed:] File No. 18,025. U. S. C. C. of appeals, 8th circuit. Term No. 232. The Security Trust Company as administrator of the estate of Sumner W. Matteson dec'd, petitioner —*vs.* The Black River National Bank of Louisville—Filed January 17, 1901.

47 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased, is plaintiff in error, and The Black River National Bank of Lowville, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into
48 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of March, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error.
} No. 1356.

It is hereby stipulated by and between the parties to the above-entitled action that the certified copy of the transcript of the record in the above-entitled action heretofore filed in the office of the clerk of the Supreme Court of the United States at Washington, D. C., upon an application made to that court for a writ of certiorari in said cause, may be taken as a return to the said writ which has heretofore been granted and allowed by said court.

Dated at St. Paul, Minnesota, this 20th day of March, A. D. 1901.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.
EDWARD C. STRINGER AND
McNEIL V. SEYMOUR,
Attorneys for Defendant in Error.

(Endorsed:) United States circuit court of appeals, eighth circuit. No. 1356. Security Trust Company, as adm'r, etc., plaintiff in error, *vs.* Black River National Bank of Lowville, defendant in error. Stipulation. Filed Mar. 22, 1901. John D. Jordan, clerk. Durment & Moore, attorneys and counselors at law, 616–619 Germania Life Ins. bldg., St. Paul, Minn.

49 [Endorsed:] File No. 18,025. Supreme Court of the United States. No. 232, October term, 1901. The Security Trust Co., administrator &c., *vs.* The Black River Nat'l Bank of Lowville. Writ of certiorari and return. Office Supreme Court U. S. Filed Mar. 25, 1901. James H. McKenney, clerk.

Return to Writ.

UNITED STATES OF AMERICA, } ss:
Eighth Circuit, }

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of The Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, *vs.* The Black River National Bank of Lowville, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this twenty-second day of March, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.